

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:EO1

PLR-135194-07

Date:

February 05, 2008

Entity:

State:

Agency:

Property:

Case:

a:

b:

c:

d:

e:

Dear

This letter responds to a letter from your authorized representative dated July 31, 2007, submitted on behalf of the Entity, requesting a ruling that the Entity is an organization to which an otherwise qualified gift would be deductible under § 170(c)(1)

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of the Internal Revenue Code (a qualified organization). The Entity represents the facts as follows.

FACTS

The Entity was created in a by the State legislature as a “body corporate and politic” to foster and facilitate scientific and technological research and development by constructing, operating, and maintaining laboratory facilities for use by scientists throughout the country and the world.¹ The State legislature explicitly determined that such purposes would benefit the state economically and educationally by creating immediate and future jobs and educational opportunities.

In addition to the purpose of performing certain public functions which the state itself could and often does perform (economic development and education), the Entity was created also to meet a condition for the transfer of certain portions of the Property (indemnification of the former owners) which the state itself could not meet because of limits on its ability to incur contingent liabilities.

The Entity’s governing and administrative powers are vested in its board of directors, which consists solely of members appointed by the Governor of State with the advice and consent of the State Senate. The governor may remove any member of the board for cause. Members are reimbursed for expenses and are compensated at a nominal rate established by the legislature.

The Entity is attached to the Agency, to which it must file a report and an informational budget annually and at such other times as the secretary of the Agency might require. If the Entity is dissolved, its assets must be reallocated to another public use or purpose.

The Entity has administrative rulemaking authority necessary to regulate its affairs and to carry out its purposes, with its rules having the force and effect of law. The Entity also has the power of eminent domain with respect to subsurface property where it already owns or controls some of the property rights.

¹ The power of the State legislature to create such entities is recognized implicitly by the State Supreme Court (Case), and the Entity represents that such power has been exercised several times over the years. The Entity represents also that no “body corporate and politic” (a body possessing at least some of the attributes of a government agency) exists in State other than those created or authorized by Congress, the State legislature, or units of local government under authority granted by the legislature.

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The entity has limited financial autonomy, and all of its funds to date have been from government appropriations. The State legislature has appropriated state general fund tax dollars totaling more than b for the Entity's support, as well as for the acquisition of the Property and the construction of an interim underground science and engineering laboratory. In addition, the Entity is the subgrantee of a b grant to State from the U.S. Government for preserving the infrastructure of the Property for possible use later as a deeper underground science and engineering laboratory and science education center.

The Entity has the power to accept donations, but only if made for the purposes for which it was created. Effective d, the Entity accepted the donation of the title to certain portions of the Property, along with related equipment.

On e, the Entity executed a gift agreement with a private philanthropist, by which the philanthropist will make cash gifts to the Entity for its use in developing an underground research and education facility. Under the terms of the agreement, the Entity must demonstrate that it is a qualified organization within the meaning of § 170(c)(1). The Entity maintains that it is either an instrumentality of State or a political subdivision of State.

LAW AND PUBLISHED GUIDANCE

Section 170(a) allows as a deduction any charitable contribution (as defined in § 170(c)), the payment of which is made within the tax year, subject to verification under regulations.

Section 170(c)(1) provides that, for purposes of § 170, the term "charitable contribution" means a contribution or gift to or for the use of, *inter alia*, a State, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.

An organization not expressly described in § 170(c)(1) may qualify to receive deductible charitable contributions under that provision if it is an instrumentality of a state or of a political subdivision of the state. See Rev. Rul. 75-359, 1975-2 C.B. 79.

In Rev. Rul. 57-128, 1957-1 C.B. 311, the Service, in applying § 3121(b)(7), determined that an association organized and operated by the heads of the insurance departments of several states, pursuant to express or implied authority, for the purpose of performing a governmental function in connection with the administration of state insurance laws, was an instrumentality wholly-owned by the several states. In

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determining whether an organization is an instrumentality, the Service considered the following factors.

1. Whether the organization is used for a governmental purpose and performs a governmental function;
2. Whether performance of the organization's function is on behalf of a state or political subdivision;
3. Whether there are any private interests involved, or whether the state or political subdivision has the powers and interests of an owner;
4. Whether control and supervision of the organization is vested in a public authority;
5. Whether express or implied statutory or other authority is necessary for the creation or use of such an organization, and whether such authority exists; and
6. The degree of the organization's financial autonomy and the source of its operating expenses.

In Rev. Rul. 79-323, 1979-2 C.B. 106, the Service treated contributions to an industrial development commission as "for the use of" the related governmental units where the commission was subject to substantial control by the state and the participating municipalities, thus evidencing a substantial governmental check on its autonomy. In determining whether contributions to organizations acting on behalf of governmental units are treated as "for the use of" those units, the ruling applied the same criteria considered by Rev. Rul. 57-128 in determining whether an organization was an "instrumentality" for employment tax purposes. In addition, the Service concluded that contributions to the commission, which promoted the general economic health of a region and maintained and attracted industry, benefited the residents of the region and served an exclusively public purpose.

CONCLUSION

Based solely on the facts and representations submitted, we conclude that the Entity meets the criteria in Rev. Rul. 57-128 for being a wholly-owned instrumentality of State, unrestricted contributions to which will be treated as for the use of State or a political subdivision of State. We further conclude that the term "exclusively public purposes" includes the promotion of economic development. Rev. Rul. 79-323. Consequently, we rule that the Entity is a qualified organization under § 170(c)(1) for the purpose of receiving deductible contributions of otherwise qualified gifts.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the

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Code. Specifically, we express or imply no opinion regarding whether the Entity is a political subdivision of State, or whether any specific gift is or will be deductible for federal income tax purposes.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

SYLVIA HUNT
Assistant Chief
Exempt Organizations Branch 2
Office of Division Counsel /
Associate Chief Counsel
(Tax Exempt & Government Entities)

enclosures: copy for § 6110 purposes